UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

DAVID B. PLATT, Appellant, v. DEPARTMENT OF HOMELAND SECURITY, Agency.	DOCKET NUMBER AT-1221-14-0790-W-2 DATE: April 17, 2023

THIS FINAL ORDER IS NONPRECEDENTIAL[1]

Mick G. Harrison, Esquire, Bloomington, Indiana, for the appellant.

Jeffrey J. Velasco, Esquire, San Francisco, California, for the agency.

BEFORE

Cathy A. Harris, Vice Chairman
Raymond A. Limon, Member
Tristan L. Leavitt, Member[2]

FINAL ORDER

¶1 The appellant has filed a petition for review of the initial decision, which denied his request for corrective action in this individual right of action appeal.

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[1] A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law. *See* 5 C.F.R. § 1201.117(c).

[2] Member Leavitt's name is included in decisions on which the three-member Board completed the voting process prior to his March 1, 2023 departure.

Generally, we grant petitions such as this one only when: the initial decision contains erroneous findings of material fact; the initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case; the administrative judge's rulings during either the course of the appeal or the initial decision were not consistent with required procedures or involved an abuse of discretion, and the resulting error affected the outcome of the case; or new and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. Title 5 of the Code of Federal Regulations, section 1201.115 (5 C.F.R. § 1201.115). After fully considering the filings in this appeal, we conclude that the petitioner has not established any basis under section 1201.115 for granting the petition for review. Therefore, we DENY the petition for review. Except as expressly MODIFIED by this Final Order, which supplements the initial decision's finding that the agency proved by clear and convincing evidence that it would have taken the same action in the absence of the appellant's protected disclosure, we AFFIRM the initial decision.

¶2 The appellant is a Transportation Security Specialist – Explosives (TSSE) with the agency's Transportation Security Agency (TSA) at the Orlando International Airport (MCO), Florida. *Platt v. Department of Homeland Security*, AT-1221-14-0790-W-1, Initial Appeal File (IAF), Tab 1 at 1, 7; *Platt v. Department of Homeland Security*, AT-1221-14-0790-W-2, Appeal File (W-2 AF), Tab 15 at 7, Tab 17 at 5. He filed this appeal asserting that the agency, in reprisal for his whistleblowing, failed to provide him with a mid-year performance rating in April 2014,[3] suspended him for 7 days in 2013 for inappropriate and disruptive behavior, and suspended him for 7 days in 2014 for

[3] The appellant does not challenge the administrative judge's findings regarding this personnel action. Accordingly, we will not address this personnel action further. *See* 5 C.F.R. § 1201.115 (the Board normally will consider only issues raised in a timely filed petition for review or cross petition for review).

causing an unprovoked confrontation with a coworker and failing to report violations of TSA policy. W-2 AF, Tab 18 at 3-4. The appellant asserted that these actions were based on his disclosure to the Department of Homeland Security's Office of Inspector General on December 21, 2011, that his second-level supervisor, an Assistant Federal Security Director – Screening (AFSD-S), allowed a Department of Defense (DOD) contractor to transport an inert Improvised Explosive Device (IED) in the cargo hold of a passenger aircraft on January 6, 2009. W-2 AF, Tab 11, Exhibit (Ex.) 27 at 2-3, Tab 18 at 3.

¶3 After a hearing, the administrative judge denied the appellant's request for corrective action. W-2 AF, Tab 27, Initial Decision (ID) at 3, 14. The administrative judge found that the appellant exhausted his remedy with the Office of Special Counsel and proved by preponderant evidence that he made a protected disclosure. ID at 3-4. Nevertheless, the administrative judge found that the appellant did not prove that his disclosure was a contributing factor in the agency's failure to provide a mid-year performance rating in April 2014 and decision to suspend him for 7 days in 2014 because those personnel actions occurred more than 2 1/2 years after the disclosure and were too remote in time for a reasonable person to conclude that the disclosure was a contributing factor in the personnel actions. ID at 5-6. The administrative judge further found that there was no other basis for finding that the disclosure was a contributing factor in those personnel actions because the AFSD-S identified in the disclosure, who was involved in the personnel actions, did not have any animus regarding the disclosure. ID at 7. In this regard, the administrative judge noted that the Acting Federal Security Director, who was the supervisor of the AFSD-S, made the authorized decision to allow the contractor to bring the inert IED onto the aircraft, the AFSD-S's reputation and professional standing were not affected by the disclosure because there was no basis for finding any wrongdoing or reason for him to be concerned about the disclosure, and the personnel actions occurred 4 years and 9 months after the events underlying the disclosure. *Id.*

¶4 The administrative judge also found that the appellant proved that his disclosure was a contributing factor in the agency's 7-day suspension in 2013 because the suspension occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in that personnel action. ID at 8. Nevertheless, the administrative judge found that the agency proved by clear and convincing evidence that it would have suspended the appellant for 7 days in 2013 absent his disclosure. ID at 8, 13. The administrative judge held that the record clearly supported the reasons for the suspension, i.e., the appellant's attempt to intimidate his coworkers into not volunteering to serve as a point of contact, or lead explosives specialist, under threat of litigation, and disparaging remarks he made about his supervisors. ID at 9-13. He further found that there was no reason for the AFSD-S, who was the proposing official, to have any animus against the appellant for his protected disclosure because the AFSD-S had no responsibility for the decision made by the Acting Federal Security Director to allow the DOD instructor to bring an inert IED needed for military training onto a commercial airline. ID at 13.

¶5 The appellant asserts on review that, contrary to the administrative judge's finding that the Acting Federal Security Director made the decision to approve the placement of the inert IED on the airplane, the AFSD-S actually made that decision. Petition for Review (PFR) File, Tab 3 at 19-20, 23-24. In this regard, the appellant relies upon a contemporaneous report written by a supervisory TSSE involved in the incident as well as deposition testimony from that individual. *Id.* at 24. The appellant also asserts that the agency did not submit any documentary evidence or legal authority supporting its contention that the Acting Federal Security Director had the discretion to allow the placement of the IED on the plane. *Id.* at 24-25. The appellant suggests that, because the AFSD-S actually made the decision in question, he had a motive to retaliate against the appellant and did so when he proposed the suspensions. *Id.* at 19-20.

¶6 The supervisory TSSE's incident report indicated that, after the item in question was identified as an inert IED to be used for the training of DOD personnel, the DOD contractor was "allowed to continue per AFSD-S." W-2 AF, Tab 11, Ex. 30. Although this language could be interpreted as indicating that the decision was made by the AFSD-S, other evidence in the record places this statement in context and shows, as found by the administrative judge, that the decision was actually made by the Acting Federal Security Director. The supervisory TSSE testified that both the AFSD-S and his supervisor, the Acting Federal Security Director, came to the checkpoint and the Acting Federal Security Director indicated, after a discussion with the AFSD-S, that he was going to use his discretion to allow the item on the plane. Hearing Transcript (HT) at 167, 176-78 (testimony of the supervisory TSSE). The supervisory TSSE explained that his report only referenced the AFSD-S, and not the Acting Federal Security Director, because the AFSD-S was the person he had called as his direct supervisor and "that was the final decision as far as I'm concerned because I don't deal with FSD [Federal Security Director]; I deal with my boss." *Id.* at 196-97.

¶7 In addition, the AFSD-S testified that he responded to the incident with the Acting Federal Security Director. HT at 216, 225-26 (testimony of the AFSD-S). The AFSD-S testified that the Acting Federal Security Director, using his authorized discretion, "made a decision to allow them to transport, which at the time was well within his authority to do so." *Id.* at 226-27. He testified that he never received any discipline regarding the incident. *Id.* at 227. He also testified that he openly, in front of his subordinates, agreed with the Acting Federal Security Director's judgment to allow the inert IED on the plane, but privately disagreed with the decision. *Id.* at 249. The deciding official in the suspension actions testified that he was not employed at the MCO when the 2009 IED incident occurred, but that the AFSD-S told him that the Acting Federal Security

Director made the decision to let a contractor with a simulated IED onto the aircraft. HT at 255-56 (testimony of the deciding official).

¶8 The appellant also identifies deposition testimony from the supervisory TSSE indicating that he "believe[d] it was [the AFSD-S's] decision in conjunction with the acting FSD at the time." W-2 AF, Tab 17 at 86. In response to an earlier question, however, the supervisory TSSE testified at the deposition that the AFSD-S was with the Acting Federal Security Director at the time, "[s]o if anybody allowed that stuff into the aircraft, it was [the Acting Federal Security Director]." *Id.* A letter dated July 16, 2012, similarly indicates that the TSA's Office of Inspection determined that the Acting Federal Security Director was present at the screening room and, based on input from the on-scene TSSE and after verifying the credentials of the DOD contractor, allowed the inert training device to proceed through screening. W-2 AF, Tab 11, Ex. 26.

¶9 Despite the appellant's contention that the agency did not present any documentary evidence or legal authority supporting its contention that the Acting Federal Security Director had the discretion to approve the placement of the IED on the plane, the record includes the testimony set forth above, indicating that the Acting Federal Security Director had such discretion, as well as the letter from the Office of Inspection confirming the authority of the Acting Federal Security Director to exercise his discretion in that situation. Moreover, this evidence is consistent with an Operations Directive affording Federal Security Directors or Acting Federal Security Directors the discretion to permit a temporary, short-term deviation from established security procedures when an articulable risk-based assessment supports such a deviation. W-2 AF, Tab 11, Ex. 10.

¶10 Upon consideration of the evidence and arguments raised by the appellant on review, and recognizing that the administrative judge's findings of fact in this regard were based upon his observation of the witnesses at the hearing and implicit determinations as to those witnesses' credibility, we find that the appellant has not established a basis for disturbing the administrative judge's

factual finding that the Acting Federal Security Director, not the AFSD-S, made the authorized decision to allow the contractor to bring the inert IED onto the aircraft. *See Crosby v. U.S. Postal Service*, 74 M.S.P.R. 98, 106 (1997) (finding no reason to disturb the administrative judge's findings when she considered the evidence as a whole, drew appropriate inferences, and made reasoned conclusions); *Broughton v. Department of Health and Human Services*, 33 M.S.P.R. 357, 359 (1987) (same).

¶11 As additional circumstantial evidence of the agency's motive to retaliate, the appellant contends that a coworker testified that he believed that the AFSD-S was retaliating against the appellant because the AFSD-S told the coworker that if he was unable to get the appellant fired he would transfer him to another airport. PFR File, Tab 3 at 10-11. The appellant also asserts that the AFSD-S told a subordinate to stay away from the appellant because he was "trouble" and had a "highly irregular" secret plan to fire him. *Id.* at 11-12.

¶12 As found by the administrative judge, the coworker who testified that the AFSD-S told him that he would transfer the appellant if he could not fire him did not "say anything about the appellant's whistleblowing." ID at 12; *see, e.g.*, HT at 274-76, 278, 284 (testimony of the appellant's coworker). The administrative judge correctly found that there were compelling reasons other than whistleblowing explaining why the AFSD-S might want to fire the appellant, including problems with the appellant's technical expertise, work ethic, and ability to get along with others. ID at 12-13; *see, e.g.*, HT at 220-22 (testimony of the appellant's fifth-level supervisor). The appellant does not allege that the coworker testified to any knowledge of the appellant's protected disclosure or any connection between the disclosure and a desire on the part of the AFSD-S to fire the appellant. Moreover, those same compelling reasons found by the administrative judge are consistent with any comment made by the AFSD-S that the appellant was "trouble" and any plans the AFSD-S may have been considering to take further disciplinary action against him. In any event, the appellant does

not explain why any plan the AFSD-S may have had to take further discipline was "highly irregular."

¶13 The appellant further contends that the AFSD-S told him of his displeasure with a whistleblower who had raised concerns in 2009 regarding agency personnel who had failed to detect IEDs being transported through the airport. PFR File, Tab 3 at 11, 15-16. The appellant contends that this incident from 2009 reflects a pattern of the AFSD-S reacting with hostility toward whistleblowers. *Id.* at 16. Moreover, the appellant asserts that investigations led or decided by persons other than the AFSD-S exonerated him, while investigations under the authority of the AFSD-S led to suspensions or letters of counseling. *Id.* at 17. The appellant further asserts that the deciding official was motivated to retaliate against him because of an email he had written about the agency's decision to change its rules regarding which employees would serve as points of contact and supervise other TSSEs. *Id.* at 19 (testimony of the appellant); *see* HT at 35, 37, 42-43, 118-20 (testimony of a former fellow TSSE).

¶14 The appellant contends that he wrote a contemporaneous memorandum documenting the AFSD-S's reaction to a 2009 email a supervisory TSSE had written to the Acting Federal Security Director stating that part of the problem with certain screening issues involved management. PFR File, Tab 3 at 15. The appellant asserts that his memorandum indicated that the AFSD-S was very upset, stated that he "didn't like technicians telling him about leadership issues," and implied that he wanted to teach the supervisory TSSE a lesson. *Id.* Although this assertion suggests that the AFSD-S harbored some animus toward the supervisory TSSE, neither the appellant nor the AFSD-S testified regarding this incident at the hearing. Moreover, even assuming that the AFSD-S was displeased with the email written by the supervisory TSSE, the appellant does not allege, and the record does not show, that the AFSD-S took any personnel action against the supervisory TSSE in reprisal for that email. Although the appellant contends that individuals other than the AFSD-S exonerated him from wrongdoing, the

appellant testified that some of these investigations were conducted by the AFSD-S or at his bequest. HT at 28-29 (testimony of the appellant). Moreover, his allegation that the deciding official in the suspension actions was upset with an email he had sent regarding point of contact procedures does not show that he acted in reprisal for the protected disclosure. Although these arguments raised on review may constitute countervailing evidence that tends to detract from the administrative judge's findings in this case, we nevertheless agree with the initial decision's reasoning and conclusion that the agency met its burden by clear and convincing evidence.

¶15 The appellant further contends that, even if the Acting Federal Security Director approved the placement of the IED on the plane, the AFSD-S still had a motive to retaliate "derived from the retaliatory motive of his superiors" and reflecting on the AFSD-S and the deciding official in their capacities as representatives of the agency's general institutional interest. PFR File, Tab 3 at 20-22. We recognize that those responsible for the agency's performance overall may well be motivated to retaliate even if they are not directly implicated by the disclosures, as the criticism may reflect on them in their capacities as managers and employees. *Wilson v. Department of Veterans Affairs*, 2022 MSPB 7, ¶ 65; *Smith v. Department of the Army*, 2022 MSPB 4, ¶¶ 28-29; *see Whitmore v. Department of Labor*, 680 F.3d 1353, 1370 (Fed. Cir. 2012). In *Robinson v. Department of Veterans Affairs*, 923 F.3d 1004, 1019 (Fed. Cir. 2019), for example, the court found that, although the deciding official did not have a personal motive to retaliate against the appellant for contradicting an agency Under Secretary, the Board's administrative judge erred by failing to consider whether he had a "professional retaliatory motive" against the appellant because his disclosures "implicated the capabilities, performance, and veracity of [agency] managers and employees, and implied that the [agency] deceived [a] Senate Committee." Nevertheless, for the reasons set forth in the initial decision, *see* ID

at 7, 13, and as modified by this Final Order, we find that any motive to retaliate on the part of these officials was minimal.[4]

¶16 The appellant also asserts that the administrative judge did not address the agency's failure to show that it took similar actions against employees who are not whistleblowers but who are otherwise similarly situated to him. PFR File, Tab 3 at 6-7; *see Carr v. Social Security Administration*, 185 F.3d 1318, 1323 (Fed. Cir. 1999).[5] In fact, the AFSD-S testified that he had issued similar proposed suspensions to other employees for similar misconduct. HT at 234 (testimony of the AFSD-S). Nevertheless, even if the agency had failed to introduce relevant comparator evidence, the third *Carr* factor is effectively removed from consideration, although it cannot weigh in favor of the agency. *Soto v. Department of Veterans Affairs*, 2022 MSPB 6, ¶ 18; *see also Rickel v. Department of the Navy*, 31 F.4th 1358, 1365-66 (Fed. Cir. 2022) ("The lack of evidence on the third *Carr* factor appears neutral[.]") (internal citation omitted). If the first two *Carr* factors were only supported by weak evidence, the failure to present evidence of the third *Carr* factor might prevent the agency from carrying its overall burden. *Smith*, 2022 MSPB 4, ¶ 30; *see also Miller v. Department of*

[4] The appellant contends that, even assuming that some discipline was warranted for his misconduct, the penalties imposed by the agency were improperly enhanced in reprisal for his whistleblowing. PFR File, Tab 3 at 8. Given the agency's issuance of three prior counseling memoranda placing the appellant on notice of similar improper conduct, IAF, Tab 4, Subtabs K, S; W-2 AF, Tab 11, Ex. 28, as well as the seriousness of the offenses that led to the suspensions at issue in this case, we find that the length of the suspensions were not improperly increased based on reprisal for whistleblowing. In fact, the deciding official in the suspension actions testified that he believed that the AFSD-S had treated the appellant too leniently. HT at 266 (testimony of the deciding official).

[5] Historically, the Board has been bound by the precedent of the U.S. Court of Appeals for the Federal Circuit on these types of whistleblower issues. However, pursuant to the All Circuit Review Act, Pub. L. No. 115-195, 132 Stat. 1510, appellants may file petitions for judicial review of Board decisions in whistleblower reprisal cases with any circuit court of appeals of competent jurisdiction. *See* 5 U.S.C. § 7703(b)(1)(B). Therefore, we must consider these issues with the view that the appellant may seek review of this decision before any appropriate court of appeal.

Justice, 842 F.3d 1252, 1262-63 (Fed. Cir. 2016). That is not the case here, where we find the strength of the agency's evidence in support of *Carr* factors one and two cuts in favor of the agency.

¶17 The appellant further contends that the agency treated him in a disparate manner regarding the proposed 14-day suspension in 2014 because the proposal was based on his failure to timely report a violation of agency rules by a supervisory TSSE, while the agency imposed only a 3-day suspension for the supervisory TSSE, who twice committed the actual offense. PFR File, Tab 3 at 7. The appellant asserts that this disparate treatment was sufficient to find that his disclosure was a contributing factor in his 2014 suspension. *Id.* at 8-9.

¶18 The appellant asserts that the supervisory TSSE in question was a whistleblower like himself. *Id.* at 11. To the extent that this is the case, any comparison with this individual does not show that the agency treated a nonwhistleblower more leniently than the appellant. In any event, we find that the supervisory TSSE was not similarly situated to the appellant. The AFSD-S proposed a 3-day suspension for the supervisory TSSE for misuse of Government property and conduct unbecoming based on his use of a Government-owned vehicle to run personal errands in September 2010 and in the fall of 2013, W-2 AF, Tab 11, Ex. 12, and the deciding official sustained the charges and agreed with the penalty, noting that the supervisory TSSE acknowledged his wrongdoing and admitted responsibility and displayed remorse, *id.*, Ex. 11; HT at 265 (testimony of the Federal Security Director for Central Florida). The AFSD-S testified that he proposed a more serious penalty for the appellant than the supervisory TSSE because the appellant had a disciplinary track record while the supervisory TSSE had been a "stellar" employee from the time he knew him. HT at 250-51 (testimony of the AFSD-S). The deciding official also noted the supervisory TSSE's exemplary work record and lack of any prior discipline, W-2 AF, Tab 11, Ex. 11, and explained that in assessing the penalty he considered that the appellant's misconduct regarding the conduct unbecoming

charge was repeated and alone warranted the aggravated penalty of at least a 7-day suspension, while he decided not to impose a 30-day suspension on the supervisory TSSE because his conduct was not willful, HT at 264-65 (testimony of the deciding official). The deciding official also testified that he may have mitigated the appellant's penalty further if he had taken responsibility for his actions. *Id.* at 262. In sum, we find that the appellant and the TSSE were not similarly situated. In addition, this argument does not demonstrate any error in the administrative judge's determination that the appellant did not prove that his disclosure was a contributing factor in his 7-day suspension in 2014. *See* ID at 6-7.

¶19 Accordingly, having considered in the aggregate all of the pertinent evidence in the record, *see Soto*, 2022 MSPB 6, ¶ 11; *see also Whitmore*, 680 F.3d at 1368, we deny the appellant's petition for review and affirm the initial decision as modified by this Final Order. The initial decision, as supplemented by this Final Order, constitutes the Board's final decision in this matter. 5 C.F.R. § 1201.113.

NOTICE OF APPEAL RIGHTS[6]

The initial decision, as supplemented by this Final Order, constitutes the Board's final decision in this matter. 5 C.F.R. § 1201.113. You may obtain review of this final decision. 5 U.S.C. § 7703(a)(1). By statute, the nature of your claims determines the time limit for seeking such review and the appropriate forum with which to file. 5 U.S.C. § 7703(b). Although we offer the following summary of available appeal rights, the Merit Systems Protection Board does not provide legal advice on which option is most appropriate for your situation and the rights described below do not represent a statement of how courts will rule

[6] Since the issuance of the initial decision in this matter, the Board may have updated the notice of review rights included in final decisions. As indicated in the notice, the Board cannot advise which option is most appropriate in any matter.

regarding which cases fall within their jurisdiction. If you wish to seek review of this final decision, you should immediately review the law applicable to your claims and carefully follow all filing time limits and requirements. Failure to file within the applicable time limit may result in the dismissal of your case by your chosen forum.

Please read carefully each of the three main possible choices of review below to decide which one applies to your particular case. If you have questions about whether a particular forum is the appropriate one to review your case, you should contact that forum for more information.

(1) Judicial review in general. As a general rule, an appellant seeking judicial review of a final Board order must file a petition for review with the U.S. Court of Appeals for the Federal Circuit, which must be received by the court within **60 calendar days** of the date of issuance of this decision. 5 U.S.C. § 7703(b)(1)(A).

If you submit a petition for review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at http://www.mspb.gov/probono for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The

Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

(2) Judicial or EEOC review of cases involving a claim of discrimination. This option applies to you only if you have claimed that you were affected by an action that is appealable to the Board and that such action was based, in whole or in part, on unlawful discrimination. If so, you may obtain judicial review of this decision—including a disposition of your discrimination claims—by filing a civil action with an appropriate U.S. district court (*not* the U.S. Court of Appeals for the Federal Circuit), within **30 calendar days** after you receive this decision. 5 U.S.C. § 7703(b)(2); *see Perry v. Merit Systems Protection Board*, 582 U.S. ____ , 137 S. Ct. 1975 (2017). If you have a representative in this case, and your representative receives this decision before you do, then you must file with the district court no later than **30 calendar days** after your representative receives this decision. If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. *See* 42 U.S.C. § 2000e-5(f) and 29 U.S.C. § 794a.

Contact information for U.S. district courts can be found at their respective websites, which can be accessed through the link below:

http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx.

Alternatively, you may request review by the Equal Employment Opportunity Commission (EEOC) of your discrimination claims only, excluding all other issues. 5 U.S.C. § 7702(b)(1). You must file any such request with the EEOC's Office of Federal Operations within **30 calendar days** after you receive this decision. 5 U.S.C. § 7702(b)(1). If you have a representative in this case, and your representative receives this decision before you do, then you must file

with the EEOC no later than **30 calendar days** after your representative receives this decision.

If you submit a request for review to the EEOC by regular U.S. mail, the address of the EEOC is:

Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 77960
Washington, D.C. 20013

If you submit a request for review to the EEOC via commercial delivery or by a method requiring a signature, it must be addressed to:

Office of Federal Operations
Equal Employment Opportunity Commission
131 M Street, N.E.
Suite 5SW12G
Washington, D.C. 20507

(3) Judicial review pursuant to the Whistleblower Protection Enhancement Act of 2012. This option applies to you only if you have raised claims of reprisal for whistleblowing disclosures under 5 U.S.C. § 2302(b)(8) or other protected activities listed in 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D). If so, and your judicial petition for review "raises no challenge to the Board's disposition of allegations of a prohibited personnel practice described in section 2302(b) other than practices described in section 2302(b)(8), or 2302(b)(9)(A)(i), (B), (C), or (D)," then you may file a petition for judicial review either with the U.S. Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction.[7] The court of appeals must receive your

[7] The original statutory provision that provided for judicial review of certain whistleblower claims by any court of appeals of competent jurisdiction expired on December 27, 2017. The All Circuit Review Act, signed into law by the President on July 7, 2018, permanently allows appellants to file petitions for judicial review of MSPB decisions in certain whistleblower reprisal cases with the U.S. Court of Appeals for the Federal Circuit or any other circuit court of appeals of competent jurisdiction. The All Circuit Review Act is retroactive to November 26, 2017. Pub. L. No. 115-195, 132 Stat. 1510.

petition for review within **60 days** of the date of issuance of this decision. 5 U.S.C. § 7703(b)(1)(B).

If you submit a petition for judicial review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at http://www.mspb.gov/probono for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

Contact information for the courts of appeals can be found at their respective websites, which can be accessed through the link below:

http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx.

FOR THE BOARD: /s/ for

Jennifer Everling
Acting Clerk of the Board

Washington, D.C.